

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KOLE VUSHAJ,

Petitioner,

Civil Case Number: 05-CV-74142
Crim. Case Number: 04-CR-80288

v.

HONORABLE AVERN COHN

UNITED STATES OF AMERICA,

Respondent.

_____ /

**ORDER ADOPTING REPORT AND RECOMMENDATION AND
STAYING MOTION UNDER 28 U.S.C. § 2255**

This is a habeas case under 28 U.S.C. § 2255. Petitioner Kole Vushaj, a federal prisoner convicted of several counts relating to alien smuggling and serving 110 months imprisonment, claims he is incarcerated in violation of his constitutional rights.

Petitioner specifically claims that his counsel was ineffective regarding his rights under the Vienna Convention on Consular Relations (VCCR). Petitioner says the government agents who arrested him failed to inform him of his VCCR rights prior to his interrogation. The government filed a response asserting that Petitioner has failed to state a claim based on case law from the Court of Appeals for the Sixth Circuit.

The matter was referred to a magistrate judge for a report and recommendation (MJRR). The magistrate judge issued a MJRR recommending that further proceedings in this case be stayed pending the outcome of decisions by the United States Supreme Court in Sanchez-Llamas v. Oregon, 126 S.Ct. 620 (2005); Bustill v. Johnson, 126 S.Ct. 621 (2005), in which the Supreme Court will consider (1) whether the Vienna

Convention coveys individual rights of consular notification, (2) whether the state's failure to notify a foreign detainee of his rights results in the suppression of their statements to police, and (3) whether a state may refuse to consider violations of the VCCR because of a procedural bar. The magistrate judge says that a decision in these cases may overrule existing Sixth Circuit law and therefore recommends that the case be stayed. Neither party has filed objections to the MJRR.

Accordingly, the findings and conclusions of the MJRR are adopted as the findings and conclusions of the Court. Petitioner's motion under § 2255 is STAYED pending a Supreme Court decision. Following the issuance of a decision, the magistrate judge shall prepare a supplemental MJRR addressing Petitioner's motion. The parties are directed to promptly notify the Court and the magistrate judge when the Supreme Court issues a decision.

SO ORDERED.

s/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: April 4, 2006

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, April 4, 2006, by electronic and/or ordinary mail.

s/Julie Owens
Case Manager
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